REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested. Entry of the Amendment under Rule 116 is merited as it raises no new issues and requires no further search.

Claims 1-4, 7, 9-15 and 18-24 are pending in the Application.

Rejections Under 35 USC 102

Claims 1-4, 10-15 and 20-24 stand rejected under 35 USC 102(b) as anticipated by *Hakenburg et al.* (US 6,792,470). By this Amendment, claims 1, 12, 23, and 24 are amended to only make explicit that which was implicitly recited in the original claims and are believed to be patentable over *Hakenburg* for the reasons discussed below.

A rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently.

Regarding the rejection of claim 1, the Patent and Trademark Office (PTO) alleges that *Hakenburg*, at column 6, lines 28-42; Fig. 5, and the associated text, discloses:

> (c) estimating, at the transmitter, multimedia data received by the receiver using the received transmission error information and the transmitted multimedia data, and
>
> (d) measuring, at the transmitter, a transmission quality of the multimedia data received by the receiver by comparing the estimated received multimedia data with the reference multimedia data.

Applicants respectfully disagree.

The claimed invention relates to an apparatus and method for measuring transmission quality of multimedia data. *Hakenburg*, on the other hand relates to a method and apparatus that retransmits lost packets based on priority levels. On page 3 of the Office Action, the PTO posits that *Hakenburg's* estimating an arrival time of the lost frame if it were to be retransmitted, anticipates "estimating at the transmitter, multimedia data received by the receiver," as recited in claim 1. The PTO further characterizes the recited "measuring, at the transmitter, a transmission

quality of the multimedia data received by the receiver by comparing the estimated received multimedia data with the reference multimedia data," as comparing priority level of the lost frame, as disclosed by Hakenburg because transmission quality can be read as priority level, because importance of I frames are higher due to better quality. We disagree with both of the Examiner's characterizations.

Applicants respectfully submit that the PTO has chosen an interpretation that is clearly at odds with the broadest possible interpretation by one of ordinary skill in the art. When taken in context with the entirety of steps c and d, estimating multimedia data can only be interpreted to mean exactly what it says, that is estimating multimedia data and cannot be characterized as estimating an arrival time, as suggested in the Office Action.

Furthermore, the PTO erred in their supposition that *Hakenburg's* comparing a priority level of a lost frame with a threshold level anticipates the recited "comparing [of] the estimated received multimedia data with the reference multimedia data." Nowhere does *Hakenburg* disclose, teach, or suggest using reference multimedia data for any other purpose except for transmission to a receiver.

Independent claims 12, 23, and 24 are similar to claim 1 and are likewise allowable over *Hakenburg*. Claims 2-4, 10-11, 13-15 and 20-22 depend from either independent claims 1 or 12 and are likewise patentable over *Hakenburg* at least for their dependence on an allowable base claim, as well as for additional features they recite. Withdrawal of the rejection over Hakenburg is respectfully requested.

Rejections Under 35 USC 103

Claims 7, 9, and 18-19 stand rejected under 35 USC 103(a) over *Hakenburg* in view of *Cooper et al.* (US 20020044531).

Whether or not the claimed subject matter would have been obvious at the time of invention to one of ordinary skill in the art is a question of law based on underlying facts. *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1348, 53 USPQ2d 1580 (Fed. Cir. 2000). The relevant factual inquiries include the following factors:

> (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) any

relevant secondary considerations.... *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

Here, Applicants respectfully submit that *Cooper* fails to remedy the deficiencies of Hakenburg in regards to independent claims 1 and 12 and therefore erred in making the ultimate finding of obviousness. Claims 7, 9, and 18-19 are patentable, at least based upon their dependency on an allowable base claim. Withdrawal of the rejection over *Hakenburg* in view of *Cooper* is respectfully requested.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited. Early issuance of a Notice of Allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicants' attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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